

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

**TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 7, Section 3328(e)
of the General Industry Safety Orders (GISO)**

Machinery and Equipment**SUMMARY**

This staff-initiated rulemaking proposal is the result of an Occupational Safety and Health Appeals Board (OSHAB) Decisions After Reconsideration (DAR) in the Matter of E.L. Yeager Construction Company, Inc., Docket No. 01-R5D3-3261 dated November 2, 2007, and OSHSB Decision and Order in the Matter of Jensen Precast, Inc., Dockets 07-R3D3-1928 through 1931, dated May 28, 2008. In Yeager, the employer marginally secured a 26,000 pound weigh hopper against inadvertent movement. The hopper broke loose from its support structure and fell on a skip loader operator causing fatal injuries. The Division of Occupational Safety and Health (Division) cited the employer for failing to secure the weigh hopper adequately. According to the Division, the hopper should have been provided with a secondary restraint system and it was not. The OSHAB DAR states that Section 3328(e) does not require machinery and equipment to be both designed and secured to minimize listed hazards. Similarly, in Jensen Precast, the OSHAB noted the disjunctive nature of the safety orders wording (designed or secured).

This rulemaking action proposes to clarify the wording of Section 3328(e) by requiring that machinery and equipment components are both designed and secured or covered or both to minimize the hazards that the safety order addresses. Requiring machinery and equipment components to be designed and secured or covered or both to withstand operational loads and stresses will reduce hazards and eliminate confusion regarding the intent of the standard.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**Section 3328. Machinery and Equipment.**
Subsection (e)

Existing Section 3328 establishes requirements for machinery and equipment to be designed, operated and maintained to ensure employee safety. Existing subsection (e) requires that machinery and equipment components be designed and secured, or covered or both to minimize hazards caused by breakage, release of mechanical energy, or loosening and falling. This

language needs to be amended to address adequately the hazards discussed in the above discussed OSHAB matters.

Amendments are proposed to require that machinery and equipment components be designed and secured or covered (or both) to minimize hazards. The proposal further states that securing or covering may be omitted only when the employer can demonstrate that doing so would be inconsistent with the manufacturer's recommendations or would impair employee safety. This proposal is necessary to promote safety by clarifying to employers and enforcement personnel the circumstances under which machinery and equipment components must be both designed and secured to minimize employee exposure.

DOCUMENTS RELIED UPON

1. Occupational Safety and Health Appeals Board, Decision After Reconsideration in the Matter of E. L. Yeager Construction Company, Inc., Docket No. 01-R5D3-3261, dated November 2, 2007.
2. Occupational Safety and Health Appeals Board, Decision and Order in the Matter of Jensen Precast, Dockets No. 07-R3D3-1928 - 1931, dated May 28, 2008.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.